

miners who is also an employee of the operator shall suffer no loss of pay during the period of his participation in the inspection made under this subsection. To the extent that the Secretary or authorized representative of the Secretary determines that more than one representative from each party would further aid the inspection, he can permit each party to have an equal number of such additional representatives. However, only one such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation under the provisions of this subsection. Compliance with this subsection shall not be a jurisdictional prerequisite to the enforcement of any provision of this Act.

The Hearing

A hearing on the merits commenced in Denver, Colorado on May 14, 1986. The evidence was essentially credible and uncontroverted.

The Secretary's Evidence

Vern Boston, an MSHA inspector for eight years, was the sole witness called by the Secretary.

Inspector Boston, a person experienced in mining, has been stationed in the Orangeville, Utah MSHA office for the last two years (Tr. 30, 31).

On April 15, 1986 the inspector met Mr. Rabbitt at the mine gate. Boston knew Rabbitt by reputation, but he didn't know if Rabbitt had ever previously been in the Deer Creek mine. Rabbitt introduced himself as the International Representative of the UMWA. The inspector knew Rabbitt had been in Utah for sometime. The two men agreed that Rabbitt would travel with the inspector during the inspection (Tr. 32-35, 52). Dixon Peacock, a representative of Emery's safety department who frequently accompanied the inspector, concurred.

After changing clothes the inspector entered the company safety department. Mr. White, the Deer Creek mine manager ^{1/}, stated he had a problem with Rabbitt accompanying the inspector. Mr. White recognized Rabbitt as a member of the International Health and Safety Department of the UMWA but he did not believe Rabbitt was a representative of the miners because he was not an employee of the mine. Also the company had its own miner representative on the property. In addition, he had come on the property without giving any advance notice (Tr. 32-38).

^{1/} As mine manager he is in charge of all phases of the mining operation (Tr. 37).